Australian Government

Australian Public Service Commission

Our reference: LEX 671

Anonymous
By email: jw4y1.i9ywy@silomails.com

Dear Applicant

Freedom of Information Internal Review Request – LEX 671

1. I am writing about your request for internal review, dated 4 October 2023, regarding a decision made by the Australian Public Service Commission (**Commission**) under the *Freedom of Information Act 1982* (**FOI Act**).

Background

2. On 5 September 2023, you requested the following documents from the Commission under the FOI Act:

   - *I request any and all documents that evidence, or tend to evidence, whether individually or collectively (i.e. in light of one another), that "materials provided by the FCA, including gazettal information and selection report, indicated that [the selection process relating to Susan O'Connor] was a process properly undertaken, and the appointment properly made."*

   - *I request any and all documents that, whether individually or collectively (i.e. in light of one another), that* ***do not*** *support Kate McMullan's finding that "materials provided by the FCA, including gazettal information and selection report, indicated that [the selection process relating to Susan O'Connor] was a process properly undertaken, and the appointment properly made."*

   - *I request access to any and all documents that, whether individually or collectively (i.e. in light of one another), evidence the fact that the SES Band 1 National Judicial Registrar role (which Susan O'Connor was given) was the subject of a lawful "role review" such that the National Judicial Registrar role was allocated an EL2 classification under rule 9 of the Public Service Classification Rules 2000.*

   - *I request access to any and all documents that, whether individually or collectively (i.e. in light of one another), evidence the fact that the SES Band 1 National Judicial Registrar role (which Susan O'Connor was given) was* ***not*** *the subject of a lawful "role review" such that the National Judicial Registrar role was allocated an EL2 classification under rule 9 of the Public Service Classification Rules 2000.*

   "

3. On 4 October 2023, the FOI decision maker, Melanie McIntyre made a decision to refuse access to documents on grounds that all reasonable steps have been taken to find documents within scope of the request, and that no such documents meeting the description requested can be found.

4. On 4 October 2023, you sought an internal review of Ms McIntyre's decision regarding your request:

   I request any and all documents, whether individually or collectively (i.e. in light of one another), that ***do not*** *support Kate McMullan's finding that "materials provided by the FCA, including gazettal information and selection report, indicated that [the selection process relating to Susan O'Connor] was a process properly undertaken, and the appointment properly made.*

Decision

5. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions.

6. I am satisfied that all reasonable steps have been taken to find documents within scope of your request, and that no such documents falling within scope were found to exist.

7. I therefore **affirm** Ms McIntyre's earlier decision by refusing your request for access to documents under section 24A of the FOI Act.

Reasons for decision

8. Subsection 24A(1) of the FOI Act provides:

   (1) An agency or Minister may refuse a request for access to a document if:

   (a) all reasonable steps have been taken to find the document; and
   (b) the agency or Minister is satisfied that the document:
   (i) is in the agency or Minister's possession but cannot be found; or
   (ii) does not exist.

9. The Office of the Australian Information Commissioner (**OAIC**) has issued guidelines under section 93A of the FOI Act. At paragraphs 3.88 to 3.93 of these guidelines, the OAIC provides guidance as to the meaning of the term 'all reasonable steps' for the purposes of subsection 24A(1) of the FOI Act. In this case these steps included searches of document management systems and emails.

Contacts

10. If you require clarification on matters in this letter, please contact the Commission's FOI Officer by email at foi@apsc.gov.au.

Review rights

11. You are entitled to seek review of this decision. Your review rights are set out at **Attachment A**.

Yours sincerely

Ms Amanda Harmer
Authorised FOI decision maker
27 October 2023

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ATTACHMENT A

Rights of Review

Asking for a full explanation of a Freedom of Information decision
If you are dissatisfied with this decision, you may seek external review. Before you seek review of a Freedom of Information (**FOI**) decision, you may contact us to discuss your request and we will explain the decision to you.

Applying for external review by the Australian Information Commissioner
If you do not agree with the internal review decision, you can ask the Australian Information Commissioner to review the decision. You have 60 days to apply in writing for a review by the Office of the Australian Information Commissioner (**OAIC**) from the date you received this letter or any subsequent internal review decision.

You can **lodge your application**:

Online: **www.oaic.gov.au**
Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001
Email: enquiries@oaic.gov.au

The OAIC encourage applicants to apply online. Where possible, to assist the OAIC you should include your contact information, a copy of the related FOI decision and provide details of your reasons for objecting to the decision.

Complaints to the Information Commissioner and Commonwealth Ombudsman

Information Commissioner
You may complain to the Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992
Website: www.oaic.gov.au

Commonwealth Ombudsman
You may complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

Phone: 1300 362 072
Website: www.ombudsman.gov.au